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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 945,186	08 31 2001	Gino W. Kennedy	1750.007	4245
21917	7590	05 07 2003		
MCHALE, & SLAVIN 4440 PGA BLVD SUITE 402 PALM BEACH GARDENS, FL 33410			EXAMINER GONZALEZ, JULIO C	
			ART UNIT 2834	PAPER NUMBER

DATE MAILED: 05 07 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/945,186	KENNEDY, GINO W.
	Examiner	Art Unit
	Julio C. Gonzalez	2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
 - 2a) This action is **FINAL**. 2b) This action is non-final.
 - 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- Disposition of Claims**
- 4) Claim(s) 1-22 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 - 5) Claim(s) _____ is/are allowed.
 - 6) Claim(s) 1-22 is/are rejected.
 - 7) Claim(s) _____ is/are objected to.
 - 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 August 2001 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a)
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because in page 10, line1, the specifications refer to figure 3 instead to figure 2. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: fuel injection system 120 (page 10, line 11). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “58” has been used to designate both upper surface and planar horizontal surface. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the diesel

engine coupled to the truck radiator as disclosed in claims 13, 22 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 13 and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims disclose that the diesel engine 100 is coupled to the truck radiator; however, the specifications have no support of how such devices may be coupled together. Also, from the figures, it may seem like if the diesel engine 100 and the truck radiator would not be able to be coupled due to the diesel engine 100 being

inside the box 40 and that the radiator of the truck is not shown at all or any means connecting both devices, the radiator of the truck and the diesel engine.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, a frame is disclosed, however, it is not clear as to what the frame belongs to, the vehicle? The apparatus or the generator? Also, the apparatus is disclosed to function as a step when mounted on a frame. It may appear as if the apparatus may not be disclosed "when" it is not mounted. Also, the word "step" may be vague. Other words such as footrest, stepladder, step structure, podium, etc may be recommendable. Moreover, the statement "apparatus functioning as a step when mounted on said frame" is not clear. Is the apparatus being a step or functioning as a step?

In page 13 and 14 of the specifications, claim 3 is repeated.

Claim 18, "said perforated wall" lacks antecedent basis.

Claim 19, "said hinge" lacks antecedent basis.

In order to advance prosecution in the merits, the Prior Art will be applied as best understood by the examiner.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 3, 10-12, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mellum et al in view of Barnhardt et al and Kennedy.

Mellum et al discloses an apparatus for large vehicles being used as securingment having a generator 23, an enclosure 20 having vertical side walls, a top parallel to the bottom (see figure 2A), a radiator 28, fan 32 and the enclosure has a wall that may be perforated (see intake 34).

However, Mellum et al does not disclose placing or using the enclosure as a step.

On the other hand, Barnhardt et al discloses for the purpose of minimizing interference with air currents thus reducing air drag, an enclosure 10 being used in large vehicles, which is used as step (see figures 1, 3, 4 and 5). Moreover, the enclosure has vertical walls that are two piece construction (see figure 4).

However, neither Mellum et al nor Barnhardt et al disclose explicitly having a thin vertical bracket between a generator and an engine.

On the other hand, Kennedy discloses for the purpose of reducing the space needed for auxiliary generators and reducing unwanted vibrations, a generator 24, a diesel engine 12 and having a bracket 28 between the generator and the engine (see figure 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to design an apparatus having a frame as disclosed by Mellum et al and to modify the invention by using the enclosure as a step for the purpose of minimizing interference with air currents thus reducing air drag as disclosed by Barnhardt et al and to place the generator and engine together by using a bracket for the purpose of reducing the space needed for auxiliary generators and reducing unwanted vibrations as disclosed by Kennedy.

11. Claims 7-9 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mellum et al, Barnhardt et al and Kennedy as applied to claims 1 and 14 above, and further in view of Mullican.

The combined apparatus discloses all of the elements above. However, the combined apparatus does not disclose explicitly having the enclosure having vertical walls being hinged to the top.

On the other hand, Mullican discloses for the purpose of providing an anti-theft container, an enclosure having vertical walls height to the top (see figures 5, 6). Moreover, the container can be clamp to frames (see figure1, 8).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to design the combined apparatus as disclosed above and to modify the invention by using a container with vertical walls hinged to the top for the purpose of providing an anti-theft container as disclosed by Mullican.

12. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mellum et al, Barnhardt et al and Kennedy as applied to claim 3 above, and further in view of Shin Caterpillar (JP 11-148348).

The combined apparatus discloses all of the elements above. However, the combined apparatus does not disclose explicitly having the radiator and the fan outside an enclosure.

On the other hand, Shin Caterpillar discloses for the purpose of providing an efficient ventilation system, a radiator 25, fan 26 outside the casing wherein the engine is located (see figure 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to design the combined apparatus as disclosed above and to modify the invention by placing the radiator and fan outside the enclosure for the purpose of providing an efficient ventilation system as disclosed by Shin Caterpillar.

13. Claims 6, 13, 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mellum et al, Barnhardt et al, Kennedy and Shin Caterpillar as applied to claim 1 and 4 above, and further in view of Ylonen et al.

The combined apparatus discloses all of the elements above. However, the combined apparatus does not disclose explicitly having the radiator between a wall and a fan.

On the other hand, Ylonen et al discloses for the purpose of improving the ventilation system associated to combustion engines, and engine 1, and a radiator 4 being between a fan 16 and a wall 2 (see figure 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to design the combined apparatus as disclosed above and to modify the invention by placing the radiator between a wall and the fan for the purpose of improving the ventilation system associated to combustion engines as disclosed by Ylonen et al.

14. Claims 2, 5, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mellum et al, Barnhardt et al, Kennedy and Shin Caterpillar as applied to claims 1, 3, 14 above.

The combined apparatus discloses all of the elements above. However, the combined apparatus does not disclose explicitly the inches height of the walls and perforations.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use such inch dimension values, since it has been held that discovering the optimum value of result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julio C. Gonzalez whose telephone number is (703) 305-1563. The examiner can normally be reached on M-F (8AM-5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nestor Ramirez can be reached on (703) 308-1371. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Jcg

April 30, 2003